IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4023 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

PARSHOTTAMBHAI M PATEL

Appearance:

1. Special Civil Application No. 4023 of 1990

MR KN RAVAL for Petitioner No. 1

RULE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 12/04/2002

ORAL JUDGEMENT

1. Heard Mr. K.N. Rawal learned advocate appearing on behalf of the petitioner. Though the notice of Rule has been issued to the respondent, he has not remained present in the present proceedings nor he has engaged any

advocate on his behalf. Therefore, the matter is taken up for hearing in absence of the respondent workman.

2. The petitioner Corporation has challenged legality and validity of the award passed by the Labour Court, Nadiad in Ref (LCN) No. 255 of 1983 dated 26-4--1988 wherein the Labour Court has granted reinstatement with continuity of service without back wages for the interim period.

3. At the time of issuing Rule by this Court no interim stay has been granted against reinstatement.

4. Learned advocate Mr. Rawal appearing on behalf of the petitioner Corporation has submitted that on 14-6-1977 while the respondent was on his duty on Himatnagar-Nadiad route his bus was checked by checking party and at that time it was found that the present respondent has taken out whole bunch of the tickets worth Rs.1400/- and that amount of Rs.1400/- has been temporarily misappropriated by the respondent workman. Thereafter, the charge-sheet was served to the respondent workman and after completion of the departmental inquiry the respondent workman was dismissed from service on 21-11-1978. Mr. Rawal learned advocate for the petitioner has also submitted that the petitioner has filed detailed reply and all the opportunities were given to the respondent even though the Labour Court has granted reinstatement with continuity of service. Mr. Rawal further submitted that the past record card of the respondent workman was produced before the Labour Court but the same has been ignored by the Labour Court. The respondent workman has not challenged legality and validity of the departmental inquiry and the Labour Court has also come to the conclusion that serious misconduct has been committed by the respondent workman. But the Labour Court has granted reinstatement just to give an opportunity to the respondent workman to improve himself. This power was not required to be exercised by the Labour Court for giving an opportunity to the respondent workman for improving his conduct. Mr. Rawal has also submitted that the Labour Court has committed error in granting reinstatement with continuity of service and not granting of back wages for the interim period to the respondent workman cannot be said to be sufficient punishment. Therefore, the Labour Court ought to have imposed proportionate punishment for the misconduct committed by the respondent workman. He has also submitted that though misconduct was found on the part of the respondent workman, the Labour Court has not imposed any punishment on the respondent workman and hence the Labour Court has

committed an error in granting reinstatement with continuity of service to the respondent workman.

5. I have considered the submissions made by Mr. Rawal learned advocate appearing on behalf of the petitioner Corporation and perused the award passed by the Labour Court. The Labour Court has come to a conclusion that the finding recorded by the competent authority of the petitioner Corporation is legal and valid and legality and validity of the departmental inquiry is not challenged by the respondent workman. Thereafter, the Labour Court has considered that punishment of dismissal from service for the misconduct of temporary misappropriation is harsh. The Labour Court has also come to a conclusion that looking to the chargesheet this is not a serious misconduct and the explanation given by the respondent is not satisfactory. However, considering the total service of 22 years and just to give him an opportunity to improve the respondent, the Labour Court has exercised its power conferred under Section 11A of the Industrial Disputes Act, 1947 and granted reinstatement with continuity of service. The Labour Court has considered that nongranting of back wages for the interim period is sufficient punishment to the respondent workman.

6. It is necessary to note at this stage that this petition has been admitted by this Court on 27-9-1991 and at that time only Rule has been issued and no stay has been granted against reinstatement. Therefore, by this time, the respondent workman must have been reinstated in service by the petitioner Corporation. Now due to reinstatement of the respondent after period of 10 years when initially this Court has not granted any interim stay against reinstatement according to my opinion interference by this Court would disturb and affect on livelihood of the respondent workman and his family. Therefore, considering this aspect, in my opinion, the Labour Court has granted reinstatement with continuity of service and that direction has not been disturbed by this Court in light of the facts and circumstances mentioned above. The Labour Court has committed error in not imposing punishment once the misconduct is found to be proved by the Labour Court. According to my opinion, some punishment is required to be imposed to the respondent workman and merely reinstatement with continuity of service without back wages for the interim period cannot be said to be sufficient punishment looking to the serious misconduct of the respondent workman. Therefore, according to my opinion, if six years' increments with cumulative effect are stopped for the

serious misconduct of the respondent workman, it will meet with the ends of justice.

7. In view of the above, the present petition is partly allowed and the impugned award passed by the Labour Court, Nadiad in Reference (LCN) No. 255/83 dated 26-4-1988 is modified to the effect that the directions issued by the Labour Court granting reinstatement with continuity of service remained in operation, is not disturbed by this Court and considering gravity of his misconduct, the respondent workman to suffer punishment of six years' increment with cumulative effect. Rule is made absolute to the aforesaid extent, with no order as to costs.

Sd/-

(H.K. Rathod, J.)

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/JVSatwara/